

## Message Text

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ACTION OPIC-12

INFO OCT-01 AF-10 ISO-00 EB-11 L-03 IO-14 PA-04 PRS-01

USIA-15 COME-00 TRSE-00 /071 W

----- 064519

R 061547Z JUN 74

FM AMEMBASSY LAGOS

TO SECSTATE WASHDC 4384

UNCLAS SECTION 1 OF 2 LAGOS 5008

E.O. 11652: N/A

TAGS: EFIN, EIND, NI, US

SUBJECT: OPIC AGREEMENT

REF: LAGOS 4949

1. THERE FOLLOWS FULL TEXT OF INVESTMENT GUARANTEE AGREEMENT  
AGREED TO BY EMBASSY AND MIN INDUSTRIES. PLEASE CONFIRM  
THAT THIS IS THE TEXT THAT WE HAVE BEEN AUTHORIZED TO SIGN.

BEGIN TEXT

INVESTMENT GUARANTEE AGREEMENT BETWEEN  
THE FEDERAL MILITARY GOVERNMENT OF THE  
FEDERAL REPUBLIC OF NIGERIA AND THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA

THE FEDERAL MILITARY GOVERNMENT OF THE FEDERAL REPUBLIC  
OF NIGERIA (HEREINAFTER REFERRED TO AS "THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF NIGERIA") AND THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA.

CONSCIOUS OF THE NEED FOR ATTRACTING INVESTORS OF THE  
UNITED STATES OF AMERICA INTO NIGERIA AS A MEANS OF PROMOTING  
INDUSTRIAL GROWTH AND TRANSFERRING DESIRED TECHNOLOGICAL  
SKILLS.

HAVE AGREED AS FOLLOWS:-

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ARTICLE 1

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THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL,  
UPON THE REQUEST OF EITHER OF THEM, CONSULT IN RESPECT OF  
PROJECTS IN NIGERIA WHICH ARE PROPOSED BY CITIZENS OF THE  
UNITED STATES OF AMERICA WITH RESPECT TO WHICH INVESTMENT  
GUARANTEES HAVE BEEN MADE OR ARE UNDER CONSIDERATION.

ARTICLE 2

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THE GOVERNMENT OF THE UNITED STATES OF AMERICA AGREES  
THAT IT WILL ISSUE NO GUARANTEE WITH RESPECT TO ANY PROJECT  
UNLESS IT IS APPROVED BY THE GOVERNMENT OF THE FEDERAL  
REPUBLIC OF NIGERIA.

ARTICLE 3

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1. IF THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
MAKES PAYMENT IN UNITED STATES DOLLARS TO ANY PERSON UNDER  
SUCH GUARANTEE THE GOVERNMENT OF THE FEDERAL REPUBLIC OF  
NIGERIA SHALL RECOGNISE THE TRANSFER BY SUCH PERSON TO THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA OF ANY RIGHT,  
TITLE OR INTEREST IN ASSETS EXPROPRIATED OR ASSETS RENDERED  
USELESS BY REASON OF EXPROPRIATION, OR ANY CURRENCY OR  
CREDITS IN ANY CURRENCY WITH RESPECT TO WHICH SUCH PAYMENT  
UNDER A GUARANTEE WAS MADE, AND THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF NIGERIA SHALL RECOGNISE THE SUBROGATION  
OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO ANY  
RIGHT, TITLE, CLAIM OR CAUSE OF ACTION EXISTING IN  
CONNECTION THEREWITH.

2. BEFORE THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
MAKES ANY PAYMENT TO ANY PERSON UNDER THIS GUARANTEE AGREEMENT,  
IT SHALL NOTIFY AND CONSULT THE GOVERNMENT OF THE FEDERAL  
REPUBLIC OF NIGERIA.

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EM IF THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
BECOMES SUBROGATED TO ANY RIGHT, TITLE, OR INTEREST IN ASSETS  
EXPROPRIATED OR ASSETS RENDERED USELESS BY REASON OF  
EXPROPRIATION OR ANY CLAIM OR CAUSE OF ACTION EXISTING IN  
CONNECTION THEREWITH, IT SHALL GIVE TO THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF NIGERIA THE FIRST OPTION TO PURCHASE  
SUCH ASSETS TO WHICH THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA SHALL HAVE ASSUMED TITLE AT A PRICE TO BE NEGOTIATED

BY THE TWO GOVERNMENTS.

ARTICLE 4

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LAWFUL CURRENCY OF THE FEDERAL REPUBLIC OF NIGERIA, INCLUDING CREDITS THEREOF ACQUIRED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA PURSUANT TO SUCH GUARANTEES, SHALL BE ACCORDED TREATMENT NOT LESS FAVOURABLE THAN THAT ACCORDED TO PRIVATE FUNDS ARISING FROM TRANSACTIONS OF UNITED STATES NATIONAL WHICH ARE COMPARABLE TO THE TRANSACTIONS COVERED BY SUCH GUARANTEES, AND SUCH CURRENCY OR CREDITS THEREOF SHALL BE AVAILABLE TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR ADMINISTRATIVE EXPENSES. HOWEVER, THE TWO GOVERNMENTS SHALL CONSULT WITH A VIEW TO ASSESSING THE UTILIZATION OF THOSE FUNDS IN SUCH MANNER AS TO AVOID ANY PREJUDICE TO THE INTERESTS OF EITHER COUNTRY.

ARTICLE 5

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THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA MAY, IN ACCORDANCE WITH ITS EXCHANGE CONTROL LAWS AND REGULATIONS, IMPOSE RESTRICTIONS ON CURRENCY TRANSFERS TO THE EXTENT REQUIRED TO ASSURE THE AVAILABILITY OF FOREIGN EXCHANGE FOR PAYMENTS ESSENTIAL TO THE HEALTH AND WELFARE OF ITS PEOPLE OR TO THE EXTENT PERMISSIBLE UNDER THE AFORE-MENTIONED EXCHANGE CONTROL LAWS AND REGULATIONS.

ARTICLE 6

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WHERE THE LOSS OF ASSETS OWNED BY A COMPANY WHICH IS UNCLASSIFIED

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COVERED UNDER THE TERMS OF THIS AGREEMENT IS DUE TO NON-COMPLIANCE WITH THE INDIGENISATION DECREE OF THE FEDERAL REPUBLIC OF NIGERIA, 1972 AND ANY RULES AND REGULATIONS MADE THEREUNDER, THE PROVISIONS OF THE INDIGENISATION DECREE SHALL APPLY.

ARTICLE 7

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1. IF ANY DISPUTE ARISES BETWEEN THE TWO GOVERNMENTS RELATING TO THE INTERPRETATION OR APPLICATION OF THE PRESENT AGREEMENT THE TWO GOVERNMENTS SHALL IN THE FIRST PLACE ENDEAVOUR TO SETTLE IT BY DIRECT NEGOTIATIONS BETWEEN THEMSELVES.

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2. IF THE TWO GOVERNMENTS FAIL TO REACH A SETTLEMENT BY NEGOTIATIONS THEY SHALL REFER THE DISPUTE TO AN ARBITRAL TRIBUNAL WHICH SHALL CONSIST OF THREE PERSONS APPOINTED AS FOLLOWS: ONE ARBITRATOR TO BE NAMED BY EACH GOVERNMENT, AND THE THIRD ARBITRATOR, WHO SHALL ALSO ACT AS CHAIRMAN OF THE TRIBUNAL, TO BE AGREED UPON BY THE TWO GOVERNMENTS PROVIDED THAT SUCH THIRD ARBITRATOR SHALL NOT BE A NATIONAL OF EITHER COUNTRY. EACH OF THE GOVERNMENTS SHALL DESIGNATE AN ARBITRATOR WITHIN THREE MONTHS OF THE DATE OF DELIVERY BY EITHER GOVERNMENT TO THE OTHER GOVERNMENT OF A DIPLOMATIC REQUEST FOR ARBITRATION OF THE DISPUTE: AND THE THIRD ARBITRATOR SHALL BE AGREED UPON WITHIN THREE MONTHS AFTER SUCH PERIOD OF THREE MONTHS. IF EITHER OF THE GOVERNMENTS FAILS TO DESIGNATE ITS OWN ARBITRATOR WITHIN THREE MONTHS OR IF THE THIRD ARBITRATOR IS NOT AGREED UPON WITHIN THE TIME LIMIT INDICATED, THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE SHALL, AT THE REQUEST OF EITHER GOVERNMENT, MAKE THE NECESSARY APPOINTMENT OR APPOINTMENTS BY CHOOSING THE ARBITRATOR OR ARBITRATORS. IN CASE ANY ARBITRATOR APPOINTED IN ACCORDANCE WITH THIS CLAUSE SHALL RESIGN, DIE OR BECOME UNABLE TO ACT, A SUCCESSOR SHALL BE APPOINTED IN THE SAME MANNER AS HEREIN PRESCRIBED FOR THE APPOINTMENT OF THE ORIGINAL ARBITRATOR AND HIS SUCCESSOR SHALL HAVE ALL THE POWERS AND DUTIES OF THE ORIGINAL ARBITRATOR.

3. THE TWO GOVERNMENTS SHALL COMPLY WITH ANY DECISION GIVEN UNDER PARAGRAPH (2) OF THIS ARTICLE.

4. EACH GOVERNMENT SHALL BE RESPONSIBLE FOR THE COST OF  
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ITS DESIGNATED ARBITRATOR AND SUBSIDIARY STAFF PROVIDED  
AND BOTH GOVERNMENTS SHALL SHARE EQUALLY ALL SUCH FURTHER  
EXPENSES INVOLVED IN THE ACTIVITIES OF THE ARBITRAL TRIBUNAL  
INCLUDING THOSE OF THE CHAIRMAN.

ARTICLE 8

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THE AGREEMENT ON INVESTMENT GUARANTEE EFFECTED BY THE  
EXCHANGE OF NOTES SIGNED AT LAGOS ON THE 28TH AUGUST, 1962  
AND THE 24TH DECEMBER, 1962 RESPECTIVELY IS HEREBY  
TERMINATED AND REPLACED BY THIS AGREEMENT.

ARTICLE 9

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THIS AGREEMENT SHALL COME INTO FORCE ON THE DATE OF  
EXCHANGE OF NOTES CONFIRMING THAT IT HAS BEEN APPROVED IN  
ACCORDANCE WITH THE CONSTITUTIONAL PROCEDURES OF THE  
CONTRACTING PARTIES AND SHALL BE SUBJECT TO FIVE-YEAR  
PERIODIC REVIEWS. THE TERMINATION OF THE AGREEMENT  
SHALL TAKE EFFECT SIX MONTHS AFTER THE RECEIPT BY ONE OF  
THE PARTIES OF A NOTICE IN WRITING THROUGH NORMAL DIPLOMATIC  
CHANNELS SHOWING THE INTENTION OF THE OTHER PARTY TO  
TERMINATE THE AGREEMENT.

PROVIDED, HOWEVER, THAT WHERE THIS AGREEMENT IS  
TERMINATED IN THE MANNER PRESCRIBED ABOVE, ITS PROVISIONS  
SHALL CONTINUE TO BE APPLIED TO ANY EXISTING AND UNEXPIRED  
TRANSACTION WHICH WAS COMMENCED UNDER ITS TERMS.

DONE AT THIS DAY OF 197  
IN TWO ORIGINALS IN THE ENGLISH LANGUAGE BOTH BEING EQUALLY  
AUTHENTIC.

FOR THE FEDERAL MILITARY FOR THE GOVERNMENT OF  
GOVERNMENT OF THE FEDERAL THE UNITED STATES OF  
REPUBLIC OF NIGERIA. AMERICA.  
END OF TEXT.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENTS, TREATY SIGNATURE, INVESTMENT GUARANTEES, MINING INDUSTRY  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 06 JUN 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
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**Reference:** LAGOS 4949  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** boyleja  
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**Status:** NATIVE  
**Subject:** OPIC AGREEMENT  
**TAGS:** EFIN, EIND, NI, US, OPIC  
**To:** STATE  
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